

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of

Petition on Behalf of the
Louisiana Public Service Commission
for Authority to Retain Existing
Jurisdiction Over Commercial Mobile
Services Offered Within the State of
Louisiana

PR Docket No. 94-107

PR File No. 94-SP⁵8

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF AIRTOUCH PAGING

AirTouch Paging ("AirTouch Paging"), by its attorneys, hereby submits its reply comments in response to the Petition of the Louisiana Public Service Commission (the "PSC"),^{1/} for authority to continue to regulate Commercial Mobile Radio Services ("CMRS"). The following is respectfully shown:

1. Fourteen interested parties (the "Commenters") filed Comments addressing the Louisiana Petition.^{2/} The Commenters generally agreed with respect to

^{1/} Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana, PR Docket No. 94-107 ("Louisiana Petition").

^{2/} Comments were filed by AirTouch Paging, AMSC Subsidiary Corporation ("AMSC"), BellSouth Corporation, Cellular Telecommunications Association ("CTIA"), Century
(continued...)

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paging services that: (i) Louisiana could not continue its current restrictive paging entry regulation;^{3/} (ii) Louisiana failed to meet its burden that the statutory tests to continue paging rate regulation contained in the Omnibus Budget Reconciliation Act of 1993^{4/} were met;^{5/} and (iii) paging services are highly competitive, thus not a suitable candidate for rate regulation.^{6/} Only one Commenter,

^{2/}(...continued)

Cellunet, Inc., E.F. Johnson, GTE Service Corporation ("GTE"), McCaw Cellular Communications Inc. ("McCaw"), Mercury Cellular Telephone Company and Mobiletel Inc. ("Mercury"), Mobile Telecommunications Technologies Corp. ("MTel"), National Cellular Resellers Association ("NCRA"), Nextel Communications Inc. ("Nextel"), Paging Network Inc ("PageNet"), and Personal Communications Industry Association ("PCIA").

^{3/} See e.g. Comments of AirTouch Paging at ¶3, and McCaw at p. 18.

^{4/} P.L. 103-66 ("Budget Act").

^{5/} See, e.g., Comments of AirTouch Paging at ¶¶7-10, BellSouth at p. 14, Mercury at pp. 4-5, MTel at p. 6-7, PageNet at pp. 3-5, and PCIA at pp. 9-10, .

^{6/} See, e.g., Comments of AirTouch Paging at ¶9, BellSouth at p. 14, Mercury at p. 5, MTel at p. 8, PageNet at pp. 4-5, and PCIA at p. 9. See also CMRS Second Report, 9 FCC Rcd at 1468, citing EMCI "The State of the US Paging Industry" (1990), ECMI, "The State of the US Paging Industry (1993). PCIA eloquently stated the competitive situation in paging as follows:

There are more than 2,400 paging service providers in the United States today. While some of these entities control large paging operations, the vast majority consist of small companies with fewer than 1,000 customers and mid-size companies with no more than a few thousand pagers in service. As a result, no company controls more than 12 percent of the paging marketplace. PCIA Comments at p. 9.

Radiofone,^{7/} supported the Louisiana Petition for continued regulation of paging services.^{8/}

2. Radiofone asserts that continued regulation of paging is necessary because "the CMRS market in Louisiana does not adequately protect subscribers from unreasonable or discriminatory rates and practices."^{9/} Radiofone, however, does not offer any evidence other than that already proffered by the Louisiana PSC.^{10/} This evidence, however, has been demonstrated to be inadequate by virtually all the interested parties. Just like those in the Louisiana Petition, all of Radiofone's examples stem solely from the cellular market.^{11/} Having failed to offer any additional evidence, Radiofone's basis for advocating the continued

^{7/} Radiofone is a well-entrenched paging service provider in Louisiana which holds certificates throughout the state.

^{8/} See Comments of Radiofone. Nextel and NCRA both supported some form of continued regulation of cellular carriers, but not for paging.

^{9/} See Comments of Radiofone at p. 4.

^{10/} Indeed, almost all of the examples used by the Louisiana PSC are the same ones used by Radiofone.

^{11/} For example, Radiofone cites to instances where the Louisiana PSC has had to step into disputes between carriers regarding the alleged misapplication of rates and the alleged unreasonable charges for roaming service. See Comments of Radiofone at pp. 3-4. It is interesting that in almost all of those instances, Radiofone was the party filing the complaint. Its should come as no surprise, therefore, that a party that uses the regulatory process to settle disputes it may have with competitors should want to maintain that regulatory forum.

regulation of paging is no better than that in the fatally flawed Louisiana Petition itself.

3. Radiofone effectively contradicts its own position that continued regulation is needed when it agrees with all the other commenters that "the CMRS market in Louisiana is very competitive."^{12/} The Commission already has determined that rate regulation is unnecessary to adequately protect subscribers to paging services when paging services are highly competitive.^{13/} Radiofone, does not explain how circumstances differ in Louisiana so substantially from the rest of the United States to make this finding by the Commission wrong with respect to the Louisiana market.

4. In the final analysis, AirTouch Paging strongly disagrees that restrictive paging entry and intrusive tariff procedures promote competition. As AirTouch Paging pointed out in its Comments, Louisiana has been one of the most heavily regulated states for paging in the United States.^{14/} This regulation impedes, rather than

^{12/} See Comments of Radiofone at p. 6. It is interesting to note that Radiofone does not believe rate or return regulation is necessary. Id. at pp. 6-11. Indeed, Radiofone argues that the Louisiana PSC has failed to meet the procedural requirements to obtain authority to employ rate of return regulation. Id. at p. 11. The arguments used to support this opposition to rate of return regulation, however, also support an opposition to any form of rate regulation.

^{13/} See CMRS Second Report, 9 FCC Rcd at 1468.

^{14/} Comments of AirTouch Paging at ¶6.

encourages, competition. As BellSouth points out, the Louisiana regulatory scheme has in fact led to higher prices for subscribers than those in other unregulated states.^{15/} AirTouch Paging finds this to be unsurprising, and asks the Commission to vigorously apply the statutory tests which must be met before allowing the paging market in Louisiana to continue to be restricted.

5. Based upon Louisiana failing to meet the statutory requirements for continued regulation of CMRS, and more specifically paging, AirTouch Paging respectfully requests that the Commission deny the Louisiana Petition.

Respectfully submitted,

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^{15/} Comments of BellSouth at p. 27 citing Affidavit of Richard P. Rozek.

CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that I have this 4th day of October, 1994, caused copies of the foregoing **Reply Comments of AirTouch Paging** to be delivered by hand, courier charges prepaid, or by first class U.S. mail, postage prepaid, to the following:

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